

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD J. ROCK, JR.,

Plaintiff,

-v-

DECISION and ORDER
09-CV-0088F

DR. C. MISA, Regional Health Services Administrator (RHSA),
Wende Hub,

Defendants.

Plaintiff, who is appearing *pro se*, was granted permission to proceed *in forma pauperis* (Docket No. 4), and, pursuant to a request from the Court for assistance in identifying and serving some of the defendants herein, the New York State Attorney General's Office provided certain information. Based on the information provided, the Court directed that the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint upon the defendants. (Docket No. 8.) To date, three of the named defendants have not appeared in this matter--Dr. Bangsil, Karen Bellamy, and Dr. Kurtz--and there is no evidence that service has been completed on them.¹

Once a plaintiff is granted permission to proceed *in forma pauperis* the burden of effecting service on the defendant shifts from the incarcerated plaintiff to the court. See *Murray v. Pataki*, 09-1657-pr, 2010 WL 2025613, at *2 (2d Cir. May 24, 2008) (Summary Order); *Romeandette v. Weetabix Co.*, 807 F.2d 309, 311 (2d Cir. 1996) ("The interests

¹N.Y.C.P.L.R. § 312-a(b), which is the method of service the Marshal Service utilizes in this District, provides that service is not "complete" until the defendant returns the acknowledgment of service to the Marshals Service.

of justice, informed by a liberal interpretation of Rule 4, are best served by allowing [incarcerated litigants] to rely on the personal service, albeit untimely, ultimately effected by the Marshal's Service). See also *Rivera v. Pataki*, No. 04 Civ. 1286 (MBM), 2005 WL 407710, at *15 (S.D.N.Y., Feb. 7, 2005) (Once an inmate-plaintiff has provided the Marshal with the information necessary to serve his complaint, "he is absolved of further responsibility for service.").

Accordingly, this Court finds that there is "good cause" to extend the time in which plaintiff may serve the summons and complaint upon defendants Dr. Bangsil, Karen Bellamy and Dr. Kurtz, an additional 120 days, and the Clerk of the Court is directed to re-issue the summonses and cause the United States Marshal to re-serve the summons and complaint on said defendants. The Clerk of the Court shall complete the necessary summonses and United States Marshal Process Receipt and Return Forms (USM-285). Dr. Bangsil can be served at the Gowanda Correctional Facility, South Road, P.O. Box 350, Gowanda, New York 14070-0350; Karen Bellamy, CORC Director, can be served at New York Department of Correctional Services, Central Office, 1220 Washington Avenue, Building #2, State Office Building Campus, Albany, New York 12226; and Dr. Kurtz shall be served at an address which has been provided to the Court *in camera*.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: July 27, 2010
Buffalo, New York